many of the prerogatives of sovereignty by the states, and their community of interests, are arguments for implying consent in interstate legal relations where, as between foreign sovereigns, express consent would be necessary to give the right to order the extra-territorial act. The principal case may rest on such implied consent. But, as this consent would be as broad as national policy might direct, its limits are uncertain and its very existence is disputable.

DEDICATION RESTRICTED BY THE DEDICATOR. — The doctrine of dedication is an anomaly in our law. Its existence is due to the public policy of giving effect to the intention of individuals to confer benefits upon the public.[1] But when a dedicator seeks to place restrictions on the land he dedicates, a conflict of interests is presented. This conflict may exist in regard to reservations or limitations in favor of the dedicator, or to conditions imposed on the gift.

Certain reservations are consistent with the public user, and are therefore permitted.[2] But limitations which would be inconsistent with such user raise the issue, shall the grant fall or the limitation be disregarded? Unfortunately the courts have frequently avoided the question by going to great lengths to find that no inconsistency existed. Thus, for example, a road may be closed at all times to coal-wagons alone, or for seven months in the year to everybody.[3] It is hardly necessary to comment upon the situation, if the user of many of our highways was thus limited. This attitude of the courts is comprehensible as a compromise between tenderness toward the dedicator and consideration for the public. Still it would seem preferable to be more ready to give effect to the public policy against such limitations, and to face the issue frankly. If the owner had both the *animus dedicandi*[4] and an intention to impose an inconsistent limitation, some cases say that no dedication results,[5] thus making predominant considerations of fairness to the individual. The more modern tendency, however, seems to be to say that the grant is good and that the limitation falls.[6] This result would appear to be more in keeping with the line of thought that found the claims of the public in these matters sufficiently strong to justify the creation of the doctrine of dedication. As an analogy pointing strongly this way, there is the holding that a wife loses her dower right in land dedicated by her husband without her consent, because "the public [right] shall be preferred before the private."[7] The rule that a limitation repugnant to a grant is void, furnishes another supporting analogy.[8]

---

[1] See Cincinnati *v.* White's Lessee, 6 Pet. (U. S.) 431, 434; Jersey City *v.* Morris, etc., Co., 12 N. J. Eq. 545, 562; 16 HARV. L. REV. 329.

[2] Noblesville *v.* Lake Erie, etc., Ry., 130 Ind. 1; Tallon *v.* Hoboken, 60 N. J. L. 212, 217.

[3] Stafford *v.* Coyney, 7 B. & C. 257; Hughes *v.* Bingham, 135 N. Y. 347. See also Arnold *v.* Blaker, L. R. 6 Q. B. 433. Further, these decisions seem inconsistent with the line of cases holding that the user must be for the whole public. Poole v. Huskinson, 11 M. & W. 827; Trustees *v.* Hoboken, 33 N. J. L. 13, 18.

[4] If in view of the limitation it is found that the owner did not have the *animus dedicandi*, the public acquires no rights. White *v.* Bradley, 66 Me. 254.

[5] Poole *v.* Huskinson, *supra;* see Stafford *v.* Coyney, *supra*, 260; Mercer *v.* Woodgate, L. R. 5 Q. B. 26, 31. But see Arnold *v.* Blaker, *supra*, 437.

[6] See Richards *v.* Cincinnati, 31 Oh. St. 506; Haight *v.* Keokuk, 4 Ia. 199, 210; Noblesville *v.* Lake Erie, etc., Ry., *supra*, 4; State *v.* Spokane, etc., Co., 19 Wash. 518, 532.

[7] Co. Lit. 31 *b*. See 20 HARV. L. REV. 407.

[8] 1 Tiffany, Real Property, 171; State *v.* Trask, 6 Vt. 355, 364.

The problem in regard to conditions raises very similar issues. If a condition precedent to user is imposed, there is no difficulty in requiring it to be fulfilled before the public acquires rights.[9] But conditions subsequent stand on a different basis. It is more than inconvenient for the public to have to retire from land which it has been accustomed to use, and upon which it has expended money. The question arises most frequently thus: a man dedicates land for a certain purpose, and the public so uses it for a time; then an attempt is made to put it to another use, whereupon the dedicator brings ejectment on the theory of reverter for breach of condition. Because of a natural aversion to forfeitures, there has become well recognized a rule in regard to grants that courts will construe what is in form a condition subsequent as a covenant, in order to carry out what they consider the real intentions of the parties.[10] Then further, in these cases of dedication, on the ground that public policy demands that the public should not incur a forfeiture, the courts disregard intention, treat all conditions as covenants, and deny a writ of ejectment.[11] Accordingly, an injunction to prevent the misuse will be granted.[12] An interesting variation is suggested by a recent case. A man dedicated land to a municipality upon condition that a street be constructed thereon, and that the abutting property-owners be free from assessment therefor and for other street improvements. The municipality accepted, built the street, and then sought to assess the abutting property-owners therefor, but without success. *Perth Amboy Trust Co.* v. *Perth Amboy*, 68 Atl. 84 (N. J., Sup. Ct.). If we regard the cost of the particular improvement in the parties' contemplation as the price paid for the land, the decision seems supportable, the second condition being construed as a covenant, which is specifically enforced. But exemption from all future assessments would seem to be beyond the municipality's authority.[13] Illegal conditions subsequent are disregarded.[14] Accordingly, it would seem that this much of the arrangement, construed as condition or covenant, should be given no effect.[15]

STATE CONTROL OVER MARITIME RIGHTS. — Although to obtain general uniformity in the maritime law Congress was given the right to legislate as to maritime matters, much power remains in the states. Of course, rules of maritime law national in their scope cannot be changed by a state, nor is any state law valid which is contrary to the fundamental principles of maritime law.[1] But the federal government not only fails in certain cases

---

[9] People *v.* Williams, 64 Cal. 498. A condition reserving the right to resume or change the use prevents dedication. San Francisco *v.* Canavan, 42 Cal. 541, 553. *Cf.* Fitzpatrick *v.* Robinson, 1 Hud. & B. 585.

[10] Avery *v.* New York, etc., R. R., 106 N. Y. 142.

[11] Cincinnati *v.* White's Lessee, *supra;* Barclay *v.* Howell's Lessee, 6 Pet. (U. S.) 498, 507. But the dedicator can recover the land when the public abandons it, or the appointed use becomes impossible. Halley *v.* Scott County, 78 S. W. 149 (Ky.); Campbell *v.* Kansas City, 102 Mo. 326. See Rowzee *v.* Pierce, 75 Miss. 846.

[12] United States *v.* Ill. Cent. R. R., 154 U. S. 225; Church *v.* Portland, 18 Ore. 73; Warren *v.* Lyons City, 22 Ia. 351.

[13] 2 Dill., Mun. Corp., 4 ed., § 781 *n.*; Smith, Mun. Corp., §§ 637, 1489. But see Bartholomew *v.* Austin, 85 Fed. 359.

[14] St. Louis, etc., R. R. *v.* Mathers, 71 Ill. 592; Scovill *v.* McMahon, 62 Conn. 378.

[15] Armstrong *v.* St. Mary's, 21 Oh. Circ. Ct. Rep. 16; Richards *v.* Cincinnati, *supra*; St. Louis *v.* Meier, 77 Mo. 13.

[1] Workman *v.* The Mayor, 179 U. S. 552; The Lyndhurst, 48 Fed. 839.